

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

KARL OWENS,)	
)	
Appellant, Defendant Below,)	
)	
v.)	ID#: 0407026223
)	
STATE OF DELAWARE,)	
)	
Appellee, Plaintiff Below.)	
)	

Submitted: June 8, 2006
Decided: July 6, 2006

ORDER

Upon Appeal from Court of Common Pleas - - ***AFFIRMED***

The Court of Common Pleas convicted Defendant of Theft. Defendant filed a timely appeal, alleging that he was denied a trial by jury and the State did not prove his criminal intent.

I.

The record, which includes a transcript, shows that Defendant sells used parts on the Internet. In May 2003, the victim ordered and paid for a specific part. Defendant failed to deliver it and, despite the victim's demands, refused to return the

victim's money. Instead of delivering the part or returning the victim's money, Defendant began "ongoing dialog." Eventually, the victim contacted the authorities. On that basis, the trial court found Defendant guilty of theft by false pretenses. The State's evidence was strong enough to support the trial court's finding that when Defendant refused to return the victim's money, Defendant acted with criminal intent.

On appeal, this court is without authority to weigh the evidence presented to the trial court. The court observes, however, that Defendant did not submit counter-evidence tending to show that he purchased the victim's part, much less that he shipped it, or that Defendant returned the victim's money. To the contrary, Defendant's testimony was confusing and self-contradictory. In any event, the State's evidence supported the inference that Defendant kept the victim's money intending to appropriate it.

II.

As to Defendant's claim that he was denied a jury trial, it may be true that when he was arraigned he asked for one. On the day of trial, May 4, 2005, however, Defendant signed a Waiver of Trial by Jury form. In his Closing Brief on appeal, Defendant claims that he "was denied the requested jury trial due to the fact all jurors had been released for the day." Defendant was represented by counsel.

There is nothing in the record supporting his claim and he signed the waiver.¹

III.

For the foregoing reasons, Defendant's May 4, 2005 verdict is based on substantial evidence and it is ***AFFIRMED***.

IT IS SO ORDERED.

/s/ Fred S. Silverman
Judge

cc: Prothonotary
Kay P. Lawson, Deputy Attorney General
Karl Owens, *Pro Se* Defendant

¹ It forms no part of this decision, but the court notes that this court is responsible for providing jurors to the Court of Common Pleas. This court's records show that it had thirty-eight jurors available for the Court of Common Pleas until they were released at 11:00 a.m. on May 4, 2005. This court's time records reveal that the non-jury trial began at 11:00 a.m. Thus, if the court could expand the record, which it cannot, it likely would find that jurors were available until Defendant signed the waiver.